

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 98-0116 ST**  
**SALES AND USE TAX**

**For Tax Periods: 1995 Through 1996**

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**ISSUES**

**1. Sales and Use Tax-Unitary Transaction**

**Authority:** IC 6-2.5-2-1, IC 6-2.5-1-2, IC 6-26-1-401(2), IC 6-2.5-9-4, *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991).

Taxpayer protests the assessment of tax on certain installation charges.

**STATEMENT OF FACTS**

Taxpayer is a registered retail merchant in the business of manufacturing, selling and distributing various sewn webbing products used by paramedics, police, Swat teams and divisions of the armed services. After a Sales and Use Tax Audit, Taxpayer timely protested the assessment of additional tax on the installation charges for the purchase of a security system and a phone system. Further facts will be provided as necessary.

**1. SALES AND USE TAX: Unitary Transaction**

**DISCUSSION**

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. There are two instances when an otherwise nontaxable sale of a service is subject to sales tax. The first is when the services are performed with respect to tangible personal property being transferred in a retail transaction and the

services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1(e). The second is when the services are part of a retail unitary transaction. IC 6-2.5-1-2. A unitary transaction is defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1.

Taxpayer in this case purchased a security system and a phone system. As explained above, charges for services performed with respect to tangible personal property are subject to sales tax if the services are performed prior to transfer of the property. Pursuant to the commercial law of Indiana, absent an explicit agreement to the contrary, transfer is presumed to take place upon physical delivery of the property. IC 26-1-2-401(2). Since there was no explicit agreement to the contrary in this case, transfer took place after the tangible personal property in the phone system and the security system was delivered to Taxpayer's business location. Tax would not be due on these transactions pursuant to the requirements of IC 6-2.5-4-1(e).

These transactions are by definition unitary transactions pursuant to IC 6-2.5-1-1. As such, it would seem that the entire charge would be subject to tax. However, in *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991), the court stated that "the legislature intends to tax services rendered in retail unitary transactions only if the transfer of property and the rendition of services is inextricable and indivisible." In *Cowden*, the court looked at the taxpayer's records, the overall nature of the taxpayer's business, and the nature of the unitary transactions to determine if the unitary transactions were inextricable and indivisible. *Id* at 723.

At the hearing, Taxpayer introduced invoices for the purchases of the security system and the phone system. Each invoice separately listed the installation charges and charged tax only on the equipment charges. The first purchase was the security system. Taxpayer submitted an estimate from another contractor for the installation of the security system equipment. That estimate was significantly higher than the actual cost of the installation by the company that sold the equipment. Taxpayer further asserted at the hearing that it was just easier to allow the selling company to install the equipment along with it being much less expensive. Taxpayer's consideration of installation by another contractor clearly indicates that Taxpayer approached this transaction as a sale of equipment and a separate sale of installation services rather than a unitary transaction and that the services are divisible and extricable from the sale of the equipment. The facts of this case meet the court's test for determining that the installation services in this particular retail transaction are exempt from tax.

### **Finding**

Taxpayer's protest is sustained.